

Ky. Op. Atty. Gen. 12-ORD-007, 2012 WL 249725 (Ky.A.G.)

Office of the Attorney General
Commonwealth of Kentucky

12-ORD-007

January 9, 2012

In re: John Rogers/Veolia Water North America — South, LLC

Summary: Veolia Water North America — South, LLC, a private for-profit corporation, was not subject to the Open Records Act where unrefuted evidence established that it was not a “public agency” based on receipt of state or local authority funds under [KRS 61.870\(1\)\(h\)](#).

Open Records Decision

This matter having been presented to the Attorney General in an open records appeal, and the Attorney General being sufficiently advised, we find that Veolia Water North America — South, LLC (“Veolia South”), a private for-profit corporation, has presented uncontested evidence that it does not meet the definition of a “public agency” under [KRS 61.870\(1\)\(h\)](#). Accordingly, it is not obligated to afford John Rogers access to records responsive to his September 29, 2011, request for a list of the company's expenditures from January 1, 2011, to August 31, 2011.

Mr. Rogers specifically requested “a list of expenditures of your company, including check number, date, amount and payee for all checks written from January 1, 2011 to August 31, 2011, ... includ[ing] checks written to consultants, salaried individuals, and organizations.” [\[FN1\]](#) In its October 4, 2011, response, Veolia South stated in part: “Veolia Water is a private contract operator of water and wastewater facilities, not a ‘public agency’ under [KRS 61.870](#) and [KRS 61.872](#). We suggest you direct any requests for information under [KRS 61.870](#) and [KRS 61.872](#) to the City of Radcliff, Kentucky or to our client, Hardin County Water District No. 1.” From that response, Mr. Rogers initiated this appeal to the Attorney General.

[KRS 61.870\(1\)\(h\)](#) defines “public agency” as including any body which “derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds.” In supplemental correspondence directed to this office, Veolia South provided an affidavit from its vice president and assistant general counsel, Van A. Cates, in which he attests that Veolia South does not derive 25% of its funds expended in the Commonwealth of Kentucky from state or local authority funds within the meaning of [KRS 61.870\(1\)\(h\)](#). Mr. Cates advises that Veolia South is owned by Veolia Water North America Operating Services, LLC (“VNWAOS”), which makes all expenditures for amounts owed by Veolia South, and the sources of those payments are “less than 2% derived” from Veolia South's municipal or public projects in Kentucky. Mr. Rogers' request and subsequent appeal provide no basis upon which to dispute Mr. Cates' affidavit. Therefore, under the principles enunciated in 09-ORD-033 (copy attached), we are unable to find that Veolia South is a public agency, and therefore it was not obligated to comply with Mr. Rogers' request under the Open Records Act. *See also* 11-ORD-197 (copy attached) and authorities cited therein.

*2 A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to [KRS 61.880\(5\)](#) and [KRS 61.882](#). Pursuant to [KRS 61.880\(3\)](#), the Attorney General should be notified of any action in circuit court, but should not be named as a party in that action or in any subsequent proceeding.

Jack Conway
Attorney General

James M. Herrick
Assistant Attorney General

[\[FN1\]](#). Unless a “list of expenditures” for the referenced time frame already exists, a public agency would not be obligated to create one. *See, e.g.*, OAG 89-45 (the Open Records Act “does not require public agencies to carry out research or compile information to conform to a given request”); OAG 76-375 (public agencies “are not obligated to compile a list or create a record to satisfy an open records request”).

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